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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)))))))	CC Docket 98-146

REPLY COMMENTS OF
ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance"), by its counsel, respectfully submits its reply comments in the above-captioned proceeding. In these reply comments, Allegiance writes to support four items presented in initial comments, which should go a long way towards encouraging rapid deployment of advanced services to all Americans. First, the Commission should ensure that competitive local exchange carriers ("CLECs") have access to inside wiring and intra-building facilities. Second, the Commission should use its expedited complaint process to fill jurisdictional gaps in cases where state commissions lack authority to implement procompetitive portions of the Communications Act. Third, the Commission should adopt post-section 271 enforcement guidelines to detect and deter backsliding, and additionally promulgate national guidelines with local enforcement mechanisms to support state commissions. Fourth, the Commission should endorse price imputation to prevent incumbent local exchange carriers ("ILECs") from utilizing market power to effect "price squeezes" on competitors.

I. The Commission should initiate a proceeding to update its inside wiring rules and extend these rules to intra-building rights-of-way to reflect the procompetitive and non-discriminatory goals of the Act

Allegiance wholeheartedly supports the view that the Commission should take steps to ensure that CLECs have nondiscriminatory access to inside wiring to provide competitive service to individuals and businesses in multi-tenant environments.[1] To bring competitive access to inside wiring, Allegiance submits that the Commission should convene a proceeding to update its inside wiring rules to reflect the procompetitive provisions of the 1996 Act. In such a proceeding, Allegiance suggests that the Commission propose inside wiring rules similar to the existing multichannel video programming distributor ("MVDP") rules, which ban exclusive contracts between multi-tenant units and MVDPs.[2] The Commission further should define the components of inside wiring – *e.g.*, connector blocks and house riser – as unbundled network elements ("UNEs").

In Allegiance's experience, ILECs, and some landlords and developers restrict access to last the hundred feet in multi-tenant situations. In some cases, Allegiance has found that the ILECs have entered into exclusive arrangements with landlords and developers that preclude competitor access. In other instances, building owners treat CLEC access requests as a revenue generating opportunity, and will only offer CLECs access to intra-building facilities at discriminatory rates. While, as at least one commenting party noted,[3] a few states have addressed inside wiring issues legislatively, the Commission nevertheless should exercise jurisdiction to ensure customer choice in multi-tenant situations by (1) requiring that building

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1 *See e.g.*, Comments of AT&T at 48-49, Comments of Winstar at 12.

2 *Telecommunications Services Inside Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, CS Docket No. 95-184, 13 FCC Rcd 3660, 3778 (1997).

3 Comments of AT&T at 49-52.

owners provide nondiscriminatory access to intra-building facilities and (2) classifying as UNEs intra-building facilities controlled by ILECs.

To the extent that inside wiring is controlled by the owner of a building, Allegiance supports the position that the Commission should issue guidelines for negotiations and agreements with building owners to ensure that CLECs receive nondiscriminatory, reasonable access.[4] Building-owner refusal to offer CLECs access to inside wiring and other intra-building facilities remains a significant barrier to CLECs seeking to deploy advanced services and other services to occupants in multi-unit buildings. While building owners likely will raise Fifth Amendment Takings arguments, Allegiance submits that so long as just compensation is paid (on a nondiscriminatory basis[5]), no Constitutional Taking will have occurred.

On a closely related point, Allegiance supports the view that the Commission has clear authority under section 224 of the Act to interpret the definition of utility rights-of-way to include those within multi-unit buildings.[6] In drafting section 224, Congress clearly intended to provide competitive carriers with nondiscriminatory access to all utility rights-of-way, including those within multi-tenant buildings. Thus, in accordance with the plain terms of section 224, the Commission should declare that competitor access to utility rights-of-way extends to rights-of-way within multi-unit buildings.

Regarding inside wiring controlled by ILECs, the Commission should require the ILECs to make these intra-building facilities available as UNEs, similar to the way in which the

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4 Comments of Winstar at 20.

5 Allegiance notes that in many instances ILECs do not pay for this access, and in such cases, any attempt to require CLECs to pay for access would be discriminatory.

6 Comments of Teligent at 8.

Commission has defined the NID as a distinct UNE.[7] To ensure that customers in multi-unit buildings have access to their provider of choice, the Commission must expressly state that all ILEC-owned inside wiring – including house riser, riser conduit, and connector blocks – are available immediately as distinct UNEs.[8]

As Allegiance has indicated, facilities-based CLECs need reasonable access to inside wiring facilities and conduit space to provide service to commercial and residential customers in multi-unit buildings. Nondiscriminatory access to such wiring and space remains a key barrier to entry, and without affirmative FCC intervention and the adoption of a national framework regarding access to inside wiring and riser space, the objectives of the 1996 Act will not be realized. Thus, the Commission should convene a proceeding to update its inside wiring rules to bring competition to residential and commercial tenants of multi-unit buildings.

II. The Commission should extend its expedited complaint process to cases where state commissions are jurisdictionally prohibited from implementing procompetitive provisions of the Communications Act.

In crafting the 1996 amendments to the Communications Act, Congress left many activities to the state commissions. As explained below, however, in some cases state commissions lack jurisdiction to implement the procompetitive provisions of the Act. In these instances, ILECs will have the ability – and the incentive – to organize themselves in a manner that evades the procompetitive provisions of the Act. To prevent ILECs from manipulating jurisdictional loopholes to circumvent their statutory obligations, Allegiance suggests that this

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7 *Id.* at 14.

8 *See id.* at 19.

Commission use its expedited complaint process - "the rocket docket"[9] – to fill jurisdictional gaps that exist at the state level.

As a case in point, the Coalition of Utah Independent Service Providers' ("Utah Coalition") initial comments in this proceeding chronicled in detail the group's inability to obtain relief in an anticompetitive discrimination complaint before the Utah Public Service Commission. Utah state law apparently prohibits the state commission from conducting pricing proceedings for new services. Instead, U S WEST simply files a "price list" in lieu of a tariff, which takes effect after five days.[10] If a pricing complaint arises, the Utah commission may require U S WEST to revoke the availability of the new service, but is not permitted to require U S WEST to amend its prices to reflect the procompetitive provisions of the Communications Act. As the Utah Coalition notes, "ISPs are left with a take-it-or-leave-it proposition: they can accept the discrimination inherent in the service filed and implemented, or they can compel the only provider of DSL service in Utah to withdraw it."

Similarly, the Texas Public Utility Commission has very little authority over the unregulated subsidiaries of Southwestern Bell Telephone ("SWBT"). Texas statute expressly limits the state commission's authority to merely accessing the records of SWBT's unregulated subsidiaries, and the state commission may do nothing more than disallow affiliate expenses in SWBT's rate-making proceedings.[11] Without state commission authority to review ILEC subsidiary activities – including the advanced services subsidiary currently being contemplated

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9 *See Implementation of the Telecommunications Act of 1996–Amendment of Rule Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order (rel. July 14, 1998).

10 Comment of Utah Coalition at 6.

11 *See* TEX. UTILITIES CODE ANN. §§ 14.003, 14.154, 53.058 (1998).

by the Commission in its companion 706 NPRM – an ILEC could easily restrain competitive carriers from deploying advanced services and sidestep important procompetitive provisions of the Act.

To prevent ILECs from avoiding their statutory obligations by gaming jurisdictional gaps similar to those outlined above, Allegiance submits that the Commission should make its rocket docket complaint proceeding available. As an integral part of these rocket docket proceedings, Allegiance suggests that the Commission establish a strong advisory role for the affected state commission. For example, the Commission could require any complainant to notify the general counsel of the relevant state commission and request the state commission to file an *amicus curiae* brief to educate the Commission on both the substance of the complaint and any jurisdictional constraint that a state commission might face. Through use of the Commission's expedited complaint process – and with the active help of the affected state commission – Allegiance submits the Commission can plug any jurisdictional holes that might exist at the state level.

III. The Commission should adopt post-section 271 enforcement guidelines and promulgate national guidelines with local enforcement mechanisms to support state commissions

In preparation for Bell operating company ("BOC") section 271 entry, Allegiance suggests that the Commission initiate a proceeding to develop a framework for detecting and deterring BOC backsliding. Section 271(d)(6) of the Act confers unambiguous authority on the Commission to prevent BOC backsliding, and Allegiance respectfully requests that the Commission address backsliding prior to BOC entry. Allegiance believes that failure to address section 271 backsliding prior to BOC entry into in-region long distance markets would incent the

BOCs to use litigation as a means of slowing Commission efforts to ensure BOC continued compliance with the section 271 competitive checklist.

As a starting point, Allegiance submits that the Commission look to the work done by the New York Public Service Commission ("NYPSC") regarding post-271 entry compliance.[12] Under the New York approach, the NYPSC acts as a first line of authority for enforcing its state-specific rules, while this Commission has ultimate authority regarding issues related to Bell Atlantic's ability to market in-region long distance service.[13] The NYPSC proposal includes a series of "critical performance measures" that Bell Atlantic must report to the NYPSC, and failure to meet established performance benchmarks results in reduced resale and UNE prices until such time as Bell Atlantic improves its performance.[14] Allegiance strongly endorses the approach taken by the NYPSC, and again submits that this Commission should look to New York in developing a federal backsliding-prevention framework.

On a related matter, Allegiance recommends that the Commission issue national guidelines with local enforcement mechanisms to support state commissions on difficult policy issues. State commissions often look to this Commission for leadership, and Allegiance believes that many state commission would welcome federal input. As an example, Allegiance notes that essentially every state commission adopted an incremental pricing methodology very similar to

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12 Prefiling Statement of Bell Atlantic-New York, *In the Matter of Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996*, Case 97-C-0271, at 34-41 (Apr. 6, 1998).

13 *Id.* at 34.

14 *Id.* at 39-41.

the Commission's TELRIC pricing proposal for UNEs, and Allegiance believes that state commissions would similarly be receptive to federal guidance on other issues. Of course, this would in no way impede efforts already underway in the states, and in some instances (*e.g.*, collocation alternatives) innovative state policies will inform the Commission's decision in adopting national regulation. At bottom, information exchange among state commissions and this Commission will go a long way toward developing coherent national telecommunications regulation and policy.

IV. The Commission should affirmatively endorse price imputation to avoid ILEC price squeezes on competitors

Allegiance strongly supports the comments that urge the Commission to require ILECs to impute the cost of loops and collocation into their retail digital subscriber line ("xDSL") tariffed rates.[15] Failure to require ILECs to impute the actual cost of providing service in their retail tariffs will enable the ILECs to leverage their bottleneck loop facilities to exact a price squeeze on competitors, which will make CLEC deployment of advanced telecommunications capability cost prohibitive. The Commission previously has noted that "an imputation rule could help detect and prevent price squeezes,"[16] and Allegiance submits that nothing short of an imputation rule will prevent price squeezes for advanced services, especially xDSL services.

The need for price imputation for xDSL services is real and immediate. For example, according to the terms of GTE's recent ADSL federal tariff filing, GTE would offer

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15 *See, e.g.*, NorthPoint at 6; Comments of DSL Access Telecommunications Alliance at 1-3.

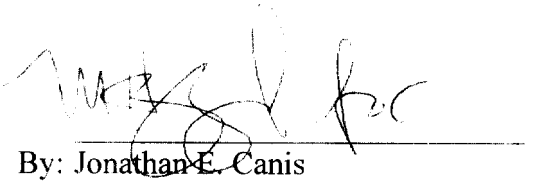
16 Implementation of the Local Competition Provisions in the 1996 Telecommunications Act, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd. 15499, 15922.

ADSL service for as little as $29 per month. At the same time, GTE charges CLECs just under $19 for an unbundled digital loop. When the cost of collocation is added in at often more than $50,000 per central office, it becomes clear that the cost of facilities-based competition in the xDSL market is easily made cost prohibitive by the ILEC's. Thus, in order to ensure the rapid deployment of advanced services by competitive carriers, the Commission must act to prevent the ILECs from leveraging their bottleneck facilities to prevent CLECs from providing competitive xDSL service.

V. Conclusion

Allegiance very much appreciates this opportunity to present its views on specific actions that the Commission should take to encourage deployment of advanced communications capabilities to all Americans, and Allegiance urges the Commission to endorse rules and policies consistent with the procompetitive sections of the Act and the specific suggestions outlined in these reply comments.

Respectfully submitted,



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